

**ENTERED**

December 11, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

ANA MARIA LICERIO

*Plaintiff,*

v.

FIESTA MART, LLC

*Defendant.*§  
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CIVIL ACTION NO. 4:21-CV-02540

**ORDER**

Before the Court is Plaintiff Ana Maria Licerio's ("Plaintiff") Motion for Leave to File Response to Defendant Fiesta Mart, LLC's ("Fiesta" or "Defendant") Amended Motion to Summary Judgment and Motion to Reconsider (Doc. No. 23). Defendant responded in opposition. (Doc. No. 25). Having reviewed the briefing, relevant case law, and prior order of this Court, the Court hereby DENIES Plaintiff's motion.

Although the Court considered Defendant's amended motion for summary judgment "unopposed" due to Plaintiff's erroneous filings, the Court did not grant summary judgment as a matter of course. Rather, the Court followed Fifth Circuit precedent and examined the summary judgment evidence to determine whether Defendant was entitled to judgment as a matter of law. *See John v. Louisiana*, 757 F.2d 698, 707–09 (5th Cir. 1986). When deciding to grant Defendant's amended motion, the Court had before it all of the evidence in this case, including the deposition testimony of both Plaintiff and Carmen Amaya, the most knowledgeable employee at Fiesta at the time. Further, the Court drew all reasonable inferences in favor of Plaintiff (the non-movant) as is required by Rule 56 of the Federal Rules of Civil Procedure. In doing so, the Court found that no genuine issue of material fact existed supporting Plaintiff's claim.

The Court today reaches the same conclusion. Specifically, the Court stands by its original ruling that there is no genuine fact issue showing that (1) an unreasonably dangerous condition existed on the premises, or that (2) Defendant failed to exercise reasonable care. Fiesta had a yellow bucket with the word “caution” at the scene. (Doc. No. 16-3 at 9:10-18). Additionally, it is undisputed that Plaintiff saw Amaya a few steps ahead of her with the cleaning bucket and that Amaya verbally warned Plaintiff about the wet area. (Doc. No. 16-2 at 22:19-25); (Doc. No. 16-3 at 5:21-24). Plaintiff nevertheless entered the wet area, slipped, and fell because, as she admitted in her deposition, she was not paying attention. (Doc. No. 16-2 at 22:19-25). Given these facts, the Court finds that Plaintiff has failed to raise a genuine issue of material fact that Defendant is liable. Accordingly, the Court does not see a reason to reopen the case and reconsider Defendant’s amended motion for summary judgment a second time. For the reasons set forth in the Court’s prior order (Doc. No. 21), Plaintiff’s Motion for Leave to File a Response and Motion to Reconsider is hereby DENIED.

SIGNED at this 11<sup>x</sup> day of December 2023.



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Andrew S. Hanen  
United States District Judge